

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs April 29, 2008

**STATE OF TENNESSEE v. RAFAEL L. MAZYCK**

**Appeal from the Circuit Court for Blount County**  
**Nos. C-14318, C-14319, C-14320, C-14321     Michael H. Meares, Judge**

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**No. E2007-01700-CCA-R3-CD - Filed September 5, 2008**

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The defendant, Rafael L. Mazyck, pled guilty pursuant to a plea agreement to two counts of theft over \$1000, a class D felony, and one count each of felony reckless endangerment and felony evading arrest, both class E felonies. He received a total sentence as a Range I, standard offender of four years, which was suspended after sixty days of confinement. In this appeal, the defendant challenges the trial court's revoking his probation and ordering him to serve his entire sentence in confinement. We affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which THOMAS T. WOODALL and ALAN E. GLENN, JJ., joined.

J. Liddell Kirk, Knoxville, Tennessee (on appeal); and R. Mack Garner, District Public Defender (at trial), for the appellant, Rafael L. Mazyck.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; Michael L. Flynn, District Attorney General; and Tammy M. Harrington, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

Regarding supervised probation, the defendant was subject to the following conditions:

1. He shall conduct himself as an upright and law abiding citizen.
2. He shall not violate any of the laws of the United States, of the State of Tennessee, or of any other State in which he may

be, or any ordinance of any municipality. He shall notify his probation officer immediately of his arrest on any charge whatsoever, regardless of the disposition.

3. He shall maintain employment approved by the probation officer and he shall promptly report any changes in employment or in employment status to the probation officer.
4. He shall report any change of address to his probation officer. He shall not move his residence out of Blount County without permission by prior order of the Court.
5. He shall not journey outside or otherwise leave the jurisdiction of the State without receiving the prior written permission of the probation officer.
6. He shall be at his residence every day from 10:00 p.m. until 6:00 a.m.
7. He shall not use intoxicating beverages or controlled substances (drugs). He shall not go in bars or taverns.
8. He shall confer with his probation officer concerning any change in marital status and obtain his permission before contracting any major debts.
9. He shall report to the probation officer either in person or in writing, as the probation officer directs. He shall obey all instructions and conditions imposed by his probation officer.
10. He shall pay his probation officer \$15.00 each month for the Department of Correction Supervision and Rehabilitation Fund and an amount to be determined by the Department of Correction for the Criminal Injuries Compensation Fund, not to exceed \$30.00.
11. He shall pay the court costs in this case.
12. He shall submit to a drug and alcohol screen at any time directed by his probation counselor.
13. He shall serve 68 days in the Blount County Jail, with 68 days jail credit.<sup>1</sup>
14. He shall perform a total of 400 hours community service work.

The defendant's theft judgments also reflect that he was to pay restitution to the victims of those crimes in the amounts of \$500 and \$1855.

The defendant's judgments were entered on January 13, 2003, and amended judgments were entered on February 5, 2003. In January 2004, a probation violation warrant was filed against the defendant, alleging that the defendant violated his probation in three ways: (1) by being arrested on

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<sup>1</sup> The defendant's judgments state that the defendant was to serve sixty days in the Blount County Jail.

December 11, 2003, for theft of a motor vehicle valued over \$10,000; (2) by failing to pay supervision fees for four months; and (3) by failing to pay restitution. The warrant was later amended to add allegations that the defendant violated probation by failing to report to his probation officer in October 2004 and by absconding.

At the defendant's revocation hearing, the defendant's probation officer, James Michael Graham, testified that he reviewed with the defendant the terms and conditions of his probation and that the defendant initialed the fourteen rules in the supplemental order of probation. Mr. Graham said the defendant was to report to the probation office once a month. He said the defendant reported to the probation office every month until December 2003, when he was arrested in Blount County for theft of a motor vehicle valued over \$10,000. Mr. Graham was unaware of the disposition of that case. He said the defendant did report that arrest. Mr. Graham filed a warrant against the defendant after the defendant's arrest, and the defendant was released on bond in February 2004. He said the defendant continued to report to him from February 2004 until September 2004 but failed to report in October 2004. He said he mailed the defendant a card informing the defendant of the missed appointment and later went to the defendant's last known residence, where he talked to the defendant's aunt who said the defendant "might be in South Carolina." Mr. Graham filed another warrant at this time. He said he had no contact with the defendant since September 2004. The defendant was also arrested in May 2007 in Knox County for two counts of burglary of a vehicle, three counts of theft, and one count of evading arrest. Mr. Graham was not aware of the disposition of the Knox County case. Mr. Graham said he did not think the defendant was "qualified to be on probation."

The defendant testified that he was twenty-four years old and unmarried. He said he did not remember the disposition of the December 2003 theft charge against him. He said that during the months he was on probation and reporting to Mr. Graham, he was working various jobs. He said he stopped reporting to Mr. Graham when he moved to South Carolina. He said he went to South Carolina because his father was sick with cancer and had hip surgery and his mother was also sick. He acknowledged that in "the rushness" of the situation, he did not contact Mr. Graham and ask for a travel permit to leave the state. He said that while in South Carolina, he worked for his uncle's business. He said he returned to Tennessee in April or May of 2007 because he knew he had to take care of the violation. He said that before he could turn himself in to Blount County authorities he "got into some trouble with some people in Knoxville." He said the Knox County charges were pending. He said he had been in continuous confinement from the time of his arrest on May 11, 2007. He said that if he were released from jail, he would go to a halfway house or live with his family. He said he did not have a drug or alcohol problem. The defendant apologized to the court for his "running" and explained that he left the state because of his parents' illnesses.

On cross-examination, the defendant testified that he was planning to plead guilty to the Knox County charges, although he said he was only doing so because he "wanted to get done with the cases" and not because he was guilty. He said that if he were given another chance at probation he would "work at complying with all the rules."

The trial court found that the defendant violated the rules of his probation “by absconding and by being involved in the commission of new crimes.” The court revoked the defendant’s probation and ordered him to serve his sentence in confinement.

The defendant contends that the trial court erred in revoking probation and ordering incarceration. The state counters that the trial court did not err. The state argues that the record contains substantial evidence of probation violations and that, therefore, the defendant has failed to show that the trial court abused its discretion. We agree with the state.

Relative to when a trial court may revoke probation and to the standard of review in an appeal of such an action, our supreme court has stated:

We take note that a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his probation or suspended sentence by a preponderance of the evidence. T.C.A. § 40-35-311. The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. State v. Williamson, 619 S.W.2d 145, 146 (Tenn. Crim. App. 1981). In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. State v. Gear, 568 S.W.2d 285, 286 (Tenn. 1978); State v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The proof of a probation violation need not be established beyond a reasonable doubt, but it is sufficient if it allows the trial judge to make a conscientious and intelligent judgment. State v. Milton, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984).

State v. Harkins, 811 S.W.2d 79, 82 (Tenn. 1991). We conclude that the trial court did not abuse its discretion in revoking the defendant’s probation. The defendant acknowledged at the probation revocation hearing that he left the state and traveled to South Carolina without obtaining permission or even informing his probation officer. Due to the defendant’s absconding, he failed to report to his probation officer as required for several months. Moreover, the defendant was arrested on two separate occasions after being placed on probation. Although there was no evidence presented of the incident that led to this December 2003 arrest and although the defendant stated that he was not at fault for his May 2007 arrest, the defendant did state that he was planning to plead guilty to the May 2007 charges and that he “got into some trouble with people in Knoxville.” The record supports the trial court’s finding that the defendant violated the terms of his probation. The defendant is not entitled to relief.

Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

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JOSEPH M. TIPTON, PRESIDING JUDGE